

REMARKS

Claims 20-33 are currently pending and claims 1-19 were previously withdrawn. By this Amendment, claim 20 has been amended, new claim 34 has been added, and previously withdrawn claims 1-19 have been cancelled. Accordingly, claims 20-34 are currently at issue.

I. Rejections Under 35 U.S.C. § 103

Claims 20-33 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,523,496 to Keithly ("Keithly"). Applicant respectfully traverses the rejections.

Claim 20 recites a method including, among other elements, "providing a breeder poultry feed diet composition which comprises a nutritive balanced feed composition and a citrus feed supplement." First, Applicant disagrees with the Examiner's assertion that the litter composition of Keithly can be considered to be a poultry feed diet composition. However, even if the Examiner considers the litter composition disclosed by Keithly to be a poultry feed diet composition, Keithly does not disclose using a composition that includes both a nutritive feed composition and a citrus feed supplement. This is because Keithly discloses a poultry litter composition that is not designed for nutritive purposes. Keithly discloses that the litter composition includes citrus byproduct which may be mixed with a secondary bedding component such as shaved pine, wood chips, sugarcane bagasse, wood shavings, sawdust, and processed paper, among others. (See Col. 6, Ln. 48-63). None of the disclosed secondary bedding components are readily recognizable as nutritive feed compositions. Accordingly, Keithly does not disclose this element of claim 20, and no prima facie case of obviousness has been established with respect to claim 20.

Additionally, Keithly does not disclose, teach, or suggest mixing the citrus composition with any nutritive feed composition. Keithly does not disclose, teach, or suggest any benefit to using the citrus composition for feed purposes, nor any benefit from the poultry incidentally ingesting any of the citrus composition. Thus, one skilled in the art, upon reading Keithly, would not be motivated to use the citrus composition as a feed composition or to mix the citrus composition with a nutritive feed composition. Accordingly, the claimed invention is not obvious in view of Keithly, and no prima facie case thereof has been established.

Further, Applicant submits that criticality of the claimed range for weight percent of the citrus feed supplement has indeed been shown. The testing results in Par. [0066] – [0071] of the Application illustrate that feed compositions of 0.8 wt. % and 1.6 wt. % produce superior results compared to compositions of 6.4 wt. % and 3.2 wt. %. It is reasonable to conclude from these test results that a limit for optimum concentrations could exist between 1.6 wt. % and 3.2 wt. %. Similarly, it would be unreasonable to conclude that simply because the composition of 1.6 wt. % was tested, that criticality only exists for that particular concentration. The selected limit of about 2 wt. % is very close to the tested concentration of 1.6 wt. %. Applicant submits that the testing results showing favorable results from compositions of 0.8 and 1.6 wt. % are sufficient to show that a concentration of citrus feed supplement of not more than about 2 wt. % is critical to producing beneficial results. Thus, the recited method would not be obvious in view of Keithly.

Claims 21-34 depend from claim 20 and include all the elements thereof. Thus, for the reasons stated above with respect to claim 20, no prima facie case of obviousness has been established with respect to claims 20-34. Additionally, even if the Examiner does not consider the recited citrus concentration of not more than about 2 wt. % to be critical, Applicant submits that criticality has been shown for citrus feed compositions having a concentration of not greater than 1.5 wt. % and 1.6 wt. %, as recited in claims 21 and 34. In fact, the Examiner seems to recognize this in Paragraph 6 of the Office Action (“the showing of criticality of the recited citrus supplement concentration ... is directed to the concentration/level of not greater than about 1.5 weight percent ...”). Thus, claims 21 and 34 are patentable over Keithly for these additional reasons.

II. Provisional Double Patenting Rejections

Claims 20-33 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20, 22-26, 28, 29, and 31-39 of copending Application No. 10/107,126. Since the rejection is only provisional, Applicant will address these rejections if and when one of the subject applications issues as a patent.

CONCLUSION

In view of the foregoing, Applicant respectfully requests reconsideration of the Examiner's rejections and allowance of claims 20-34 in the present Application. Applicant submits that the Application is in condition for allowance and respectfully requests an early notice of the same.

Please charge all fees in connection with this communication to Deposit Account No. 19-0733.

Respectfully submitted,

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